IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3058 OF 1992.

Shri Javerilal Premraj Jain, aged 40 years, Occ: Business, residing at 59, New Bazar, Kirkee, Pune - 411 003.	]]]]	.. Petitioner (Ori. Pltff.)

Versus

M/s. Asian Traders, formerly a Partnership concern but now sole Proprietory concern by its sole Proprietor Shri Bhupendra Singh Jeet Singh Chandok, aged about 38, Occupation - Business, residing at Flat No.103, Chidakshi Apartment, Salisbury Park, Pune - 411 001.	]]]]]]]]	.. Respondent (Ori. Defdt.)

Mr. S.G. Surana for the petitioner.

Mr. G.M. Khambete for the respondent.

CORAM: ANOOP V. MOHTA, J.

DATED: 12TH JULY, 2005

ORAL JUDGMENT. :

1. The present petitioner-landlord has invoked Article 227 of the Constitution of India and seeks to challenge the impugned judgment and decree dated 17th January, 1993, passed by the 10th Additional District Judge, Pune, in Civil Appeal No.533 of 1984 (for short "Appellate Court"), whereby, the judgment and decree passed in Civil Suit No.1394 of 1984 by the Additional

Small Causes Judge, Pune (for short "Trial Court"), dated 13th April, 1988, was set aside and the suit for possession was dismissed.

2. The petitioner-landlord purchased the property on 12th March, 1983. On 11th May, 1983, a notice was issued to one Atul Sanghain c/o. M/s. Asian Traders. The same was resisted and replied to by the said Atul Sanghain. Basically, the resistance was two-fold. Firstly, that there was no proper atornement notice and/or intimation of transfer of property and secondly, that there was no proper assignment of any kind, for recovery of the arrears and as the tenant refused to accept the ownership unless original documents or supporting documents of title deeds were placed for verification. The respondent-tenant in fact in the present case filed Suit No.838 of 1983 for declaration of tenancy on 22nd April, 1983 as the petitioner threatened to evict. The injunction was accordingly granted. The respondent is in possession of the premises till this date. By Notice of demand dated 21st June, 1983, the petitioner-landlord has invoked the provisions of the Bombay Rents Hotels and Lodging House Rent (Control) Act, 1947 (for short "The Bombay Rent Act") and specially Section 12 and, thereby, terminated the tenancy also on the ground of arrears of rent. The

petitioner, by reply dated 26th July, 1983, resisted the said demand and refused to accept the petitioner as owner of the said property for want of verification of the original documents. The challenge was also made about the recovery of arrears of rent in absence of proper assignment or any such clause or proper notice.

3. The petitioner, therefore, preferred suit for possession in the Small Causes Court at Pune being Civil Suit No.1394 of 1984. The same was resisted by the Written Statement by the respondent dated 5th January, 1985. The evidence was led by the parties. After considering the material placed on the record, the learned Trial Judge, by its order dated 30th April, 1984, decreed the suit for possession on the foundation that the demand notice was duly served, the respondent-tenant was not willing and ready to pay the rent and, therefore, became a defaulter.

4. The Appellate Court, however, by its judgment and order dated 17th January, 1992, reversed the said finding and held that the petitioner-landlord’s demand notice as contemplated under Section 12 of the Bombay Rent Act was invalid. The respondent-tenant was not a defaulter and, therefore, the landlord was not entitled for the possession of the suit premises. Therefore, the

petitioner-landlord has filed the present Writ Petition.

5. Heard learned counsel for the petitioner Mr. S.G. Surana and learned counsel for the respondent Mr. G.M. Khambete. The undisputed position, as recorded by the Courts below and as rightly observed by the Appellate Court is that the notice of demand dated 21st June, 1983, was invalid as the tenant-respondent was not in arrears on the date of the notice on the following two reasons.

(a) That there are undisputed facts on the record that the respondent-tenant was depositing the rent in Court regularly. The basic mandate of the provisions of the Bombay Rent Act is that the tenant must be ready and willing to pay the rent as agreed. In the present case, as referred above, the tenant on the basis of the first notice itself resisted and insisted for verification of the documents of title and any such other clauses or agreement, whereby any right to recover the arrears of rent had been assigned or given or created in favour of the petitioner-landlord. The provisions of the Transfer of Property Act is very clear that in absence of any specific clause or provision or agreement, the subsequent landlord is not entitled in every case to recover the arrears of rent of earlier owner/landlord.

In the present case, admittedly, there is nothing on the record to suggest the same or even borne out from the record. The learned counsel appearing for the petitioner was also unable to demonstrate anything to that effect.

(b) As contended by the learned counsel appearing for the respondent, there is no atornement notice given in the present case. The notice, as referred above, dated 11th May, 1982, and as resisted and replied by reply dated 24th May, 1983, and even the demand notice dated 21st June, 1983, as replied by reply dated 26th July, 1983, nowhere supports the case of the petitioner that the notice of atornement as contemplated under the Transfer of Property Act or even otherwise was given or served.

6. In this background, as observed and, as contended by the learned counsel for the tenant-respondent that even though the tenant-respondent was ready and willing to deposit the rent, in absence of any document coming forward in reference to the ownership and title of the premises in question, the deposit of such rent with the petitioner in this background, in no way, contemplates under the provision of the Bombay Rent Act. The dispute was definitely

raised by the respondent to the notice of demand on the same lines.

7. There is also a clear finding that the defendant-respondent came to know for the first time when evidence was recorded and the Certificate Exhibit-60 and Exhibit-61 produced in the Court by the petitioner-landlord in support of his ownership or title. Therefore, it is difficult to accept the case of the petitioner that once the notice dated 11th May, 1983 was served, that itself was sufficient to consider the intimation of change of ownership. There is no dispute that the original landlady Sunita Bhojwani, at the relevant time never intimated or informed the tenant about the change of ownership. Therefore, the respondent-tenant, at the relevant time, as submitted, was not aware and also for want of detail documents of title, that the petitioner-landlord has acquired the title of the property in question. In this background also, the demand notice (Exh.59) dated 27th June, 1983, in no way supports the petitioners' case.

8. The last issue about regular payment deposited by the tenant in Court from 10th August, 1988, till 13th January, 1992, further reflects, as rightly observed by the Appellate Court, that the respondent-tenant was

ready and willing to pay the rent. As the dispute about the ownership as raised and as no material document in support of the ownership were placed on the record or shown at the relevant time and/or before issuance of the demand notice in question, the anxiety of the tenant-respondent, in this background, cannot be overlooked. The tenant is definitely bound to make the payment of rent regularly to the landlord and but not to the third person.

9. The petitioner admittedly purchased the property on 12/2/1982. At that time, the respondent was the tenant. As pointed out by the learned counsel appearing for the respondent that in fact all the formalities of transfer of ownership of the premises in question were completed in favour of the plaintiff-petitioner sometime on 30th January, 1983. The Appellate Court, on the basis of the observations made by the Trial Court, after considering the deposit already made by the respondent-tenant held that the arrears of rent on the date of the demand notice was only of four months. This factor also supports the view taken by the Appellate Court, based on the material on the record.

10. For the above reasons and in view of the fact that the finding given by the Appellate Court is reasonable and within the ambit of the record. There is no case made out to interfere with the finding given by the Appellate Court.

11. In the light of above, the Petition is dismissed. Rule is discharged. No order as to costs.

[ANOOP V. MOHTA, J.]

[srpasha@hc]